

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2521 of 2010

1. Annapoorani
2. Dhanabakkiyam

.. Appellants/Petitioners

Vs.

The Managing Director,
TamilNadu State Transport Corporation Limited,
Vellore.

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 04.11.2003 passed in M.C.O.P.No.595 of 2002 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja
For Respondent : Mr.K.J.Siva Kumar

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.595 of 2002 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tiruvannamalai. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,00,000/- for the death of one Ganesan, husband of the first claimant and son of the second claimant in a road accident on 28.07.2001.

2. The case of the claimants is that on 28.07.2001, the deceased Ganesan was riding his cycle on Tiruvannamalai - Chengam Road. At about 07.30 P.M., when he was nearing Madura thathankuttai, a speeding bus bearing Registration No.TN 23 N 1306 belonging to the appellant / TamilNadu State Transport Corporation Limited hit him, as a result of which he died on the spot. According to the claimants, the rash and negligent driving

of the driver of the bus belonging to the appellant / TamilNadu State Transport Corporation Limited was the cause of the accident and therefore the appellant / TamilNadu State Transport Corporation Limited is liable to pay compensation.

3. The learned Principal District Judge / Motor Accidents Claims Tribunal, Tiruvannamalai, after analysing the evidence of record, awarded a compensation of Rs.1,74,000/- together with interest at the rate of 9% per annum to the claimants. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.F.Terry Chellaraja, learned counsel appearing for the appellants / claimants contended that though the claimants in their claim petition have stated that the deceased was a mason by profession earning Rs.3,000/- per month, the Tribunal fixed very meager sum of Rs.1,500/- as monthly income of the deceased did not award any amount towards future prospects and prayed for enhancement of compensation.

5. Per contra, Mr.K.J.Siva Kumar, learned counsel appearing for the respondent / TamilNadu State Transport Corporation Limited contended that in the absence of evidence to prove the actual income of the deceased, the Tribunal rightly fixed a sum of Rs.1,500/- as monthly income of the deceased keeping in mind the year of accident, which is 2001. He also contended that the Tribunal after considering all the aspects of the case has awarded just compensation and the same need not be disturbed at this stage and prayed for dismissal of the appeal.

6. A perusal of the records shows that in the claim petition, the claimants contended that the deceased was a mason by profession earning a sum of Rs.3,000/- per month. No income proof was adduced by the claimants. The accident took place in the year 2001 and therefore the notional monthly of the deceased can be fixed as Rs.3,000/- considering the year of accident. The Tribunal has not awarded any amount towards future prospects and as per the decision rendered in National Insurance Company Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), 25% should be added towards future prospects. There are two persons depending on the income of the deceased. Therefore 1/3 is deducted from his income towards personal expenses of the deceased and the proper multiplier is '13' as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.3,000/-
25% Future Prospects = Rs.750/-
Total = Rs.3,000/- + Rs.750/- = Rs.3,750/-
After 1/3 deduction = Rs.2,500/-

Loss of dependency:

= Rs.2,500/- x 12 x 13
= Rs.3,90,000/-

Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.3,90,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.4,60,000/-

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,74,000/- to Rs.4,60,000/-.

(iii) The claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of receipt of a copy of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The respondent / TamilNadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.4,60,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.595 of 2002 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the ratio of apportionment fixed by the Tribunal, after following due process of law.

(vi) Since the appeal is filed with a delay of 717 days, the appellants / claimants are not entitled to claim interest for this delay period.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Principal District Judge,
Tiruvannamalai.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Ms.M.Malar, Advocate, SR.No.91650.

+1cc to Mr.K.J.Sivakumar, Advocate, SR.No.92069.

C.M.A.No.2521 of 2010

NMI (CO)
CSR: 05.03.2020

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